Transitional Mechanisms to Apply if Linesharing is Removed as UNE

(1) Refrain from Prospective Preemption of State Law

- The first principle set forth by NARUC in its UNE framework was no state preemption. States should not be preempted from acting under independent market-opening laws at the state level. Existing state action under independent state authority should not be disturbed. To the extent that states act after the Triennial Review Order in ways that actually conflict with the Commission's unbundling rules, the Commission can always entertain preemption petitions addressing those particular situations.

(2) Grandfathering of Existing Lines

- During the period following the elimination of the linesharing UNE in any area, consumers who subscribed to CLEC DSL services should not be subjected to an FCC-mandated increase in prices over what they expected to pay (and, indeed, contracted to pay) when they subscribed. Should linesharing be eliminated in any area, existing customers (i.e. those customers who contracted for service before the linesharing UNE was eliminated) should be grandfathered at the prices they contracted to pay, and the FCC should not interfere with those contracted rates. These existing broadband customers should be grandfathered until service disconnection.

- Due to the normal processes of customer attrition and churn, Covad expects that most of its existing line shared lines in service may no longer be in service over the course of three years. Grandfathering merely allows consumers who relied on the availability of competitive broadband services to continue to rely on the arrangements they have already purchased.

(3) Transition to permit sufficient time for linesharing rate negotiations with ILECs

- In areas where linesharing is eliminated as a UNE, CLECs will have to negotiate new contractual terms and conditions with ILECs. This process will take time, and CLECs cannot enter those negotiations without the ability to maintain customer confidence during the negotiation period. Therefore, for the first year after linesharing is eliminated as a UNE in any area, current pricing, terms and conditions for the line sharing UNE should continue to apply in that area. This enables Covad to continue its day-to-day operations processing and fulfilling current order volumes, while it works over that year to preserve access arrangements with the ILECs.

- The Commission could require that, if CLECs enter into a linesharing pricing agreement during that first year of transition, the newly contracted rates would apply to all new linesharing customers as soon as such an agreement becomes effective.

- New customers contracting for service during this one year transition would be entitled to the grandfathered rate for only one year, after which time the new, non-UNE rate would apply.

(4) Creation of an Interstate Line Sharing Service

- In areas where the Commission determines that competitors are not impaired without access to the line sharing UNE, and the linesharing UNE is subsequently eliminated, incumbent LECs should be required to continue providing access to the high-frequency portion of the loop as a mandatory interstate telecommunications service. This mechanism is necessary to avoid cutting CLEC DSL providers off from providing residential service altogether.

- Without an ILEC requirement to provide line sharing in some form, Covad is left with little effective bargaining power with the incumbent LECs in negotiating line sharing access arrangements. The availability of an interstate line sharing service would at least provide Covad with some recourse to the FCC in the face of unreasonable ILEC negotiating positions. If the Commission wants to move Covad to negotiated line sharing pricing, it should provide Covad with the tools it needs to actually negotiate access.

- Until its tariff for such a line sharing service goes into effect, no incumbent LEC would be permitted to refrain from providing access to the high-frequency portion of the loop under the terms of its current interconnection agreements.